IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22189 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADARSH CHEMICALS & FERTILIZERSLIMITED & 1 - Petitioner(s)

Versus

UNION OF INDIA & 2 - Respondent(s)

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Appearance :

MR PF ADHVARYU for Petitioner(s) : 1 - 2.

DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.

MR JITENDRA MALKAN for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/12/2005

ORAL JUDGMENT

1. Rule. Mr.Malkan, learned Assistant Solicitor General of India waives the service of rule on behalf of the respondents.

2. With the consent of the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Revisional Authority i.e. Additional Director General of Foreign Trade dtd.7/9/2005 in dismissing the revision application preferred by the petitioner challenging the Order in Original No.08/F5/26/AM-98/ECA dtd.2/4-1-2001 passed by the Dy.DGFT,

Ahmedabad, by which penalty of Rs.4,41,00,000 (Four Crores Forty One Lacs only) came to be imposed on the petitioner firm for non-fulfillment of export obligation against the Advance License No.P/L/3401181 dtd.22/7/1991 and additional penalty of Rs.10,000 (Rupees Ten Thousand only) each, came to be imposed on 10 directors of the firm.

4. It appears from the record that against the aforesaid order, the petitioner preferred an Appeal before the Central Government i.e. Additional Director General of Foreign Trade. It also appears that during the course of the submissions before the Revisional Authority, it was contended and submitted on behalf of the petitioner that out of 24 consignment, documents with respect of 16 consignments were logged and as the records of remaining 8 consignments, supporting documents in support of export affected through the shipments were available,

but the entries have not been logged/audited by the customs; and accordingly, the appellate authority directed the petitioner to approach the Adjudicating Authority with all the documents (including the documents with respect of 8 consignments also) for verification within a period of 15 days. It is the contention on behalf of the petitioner that time and again the petitioner approached the Adjudicating Authority with all documents for verification and lastly on 27/12/2004 the petitioner in fact had gone to the office of the Dy.DGFT, Ahmedabad, but as the concerned officer was not present, the documents were not submitted and thereafter, the petitioner has again requested the Adjudicating Authority to communicate another date, but no date was given and in the meantime, the aforesaid appeal came up for hearing before the Appellate Authority and considering the fact that the aforesaid documents were not submitted before the Adjudicating Authority as directed and the

appellate authority was of the opinion that the petitioner is unnecessarily lingering the matter and has failed to produce the relevant documents in original before the Regional Officer, the Appellate Authority rejected the aforesaid appeal by the impugned order on the ground of non-sub-mission of the documents as aforesaid. Being aggrieved by and dissatisfied with the same, the petitioner has referred the present petition under Articles 226 and 227 of the Constitution of India.

5. Mr.Nanavati, learned advocate appearing on behalf of the petitioner has submitted that in fact, the petitioner had approached the office of the regional officer – Adjudicating Authority on 27/12/2004, but the concerned officer was on leave and was not present in the office and therefore, the documents could not be submitted. He has also further submitted that subsequently immediately thereafter, the petitioner has

addressed a letter to the said authority requesting to inform him the next date of hearing, but no further date is informed and therefore, it is submitted that the petitioner cannot be held responsible for the same. However, the appellate authority has not considered the above submissions and has dismissed the appeal only on the ground that the necessary documents are not submitted before the Adjudicating Authority for verification as directed by the appellate authority earlier. He has also further submitted that the petitioner was ready and willing to produce all the necessary documents like Shipping Bills, Bank Realisation Certificate,DEEC Book (Import and Export) before the Adjudicating Authority for its verification, as directed earlier on a particular date that may be given and he has submitted that on 12/12/2005 the petitioner will produce all the necessary documents like Shipping Bills, Bank Realisation Certificate,DEEC Book (Import and

Export) before the Adjudicating Authority for its verification so that it can forward its report to the Appellate Authority. He has also further submitted if the date for personal hearing is required to be fixed, the same may also be fixed so that in future, there may not be any further complication and difficulty.

6. In response to the notice issued by this Court, Mr.Malkan, appeared and filed Affidavit-in-reply on behalf of the respondents and it is submitted that sufficient opportunity was given to the petitioner to submit the relevant documents for verification. However, the petitioner has not produced the same. He has also further submitted that if this court is giving one more opportunity to the petitioner to submit the relevant documents on a particular date, then within a period of 7 to 8 days from the date of submission of the documents, the personal hearing will be given and thereafter the

authority will submit its report to the Appellate Authority so that the appellate authority can pass appropriate order.

7. In view of the above, the following order is passed;-

[i] The petitioner is directed to produce all the necessary documents available with the petitioner like Shipping Bills, Bank Realisation Certificate, DEEC Book (Import and Export) for verification before the Adjudicating Authority – respondent No.3 on 12/12/2005 and the respondent No.3 shall issue acknowledgment receipt for the acceptance of the same.

[ii] The respondent No.3 will give an opportunity of personal hearing to the petitioner on 20/12/2005, the date which is tentatively agreed between the parties and if for any reason, the said date is not convenient to

the Adjudicating Authority, the petitioner will be informed in writing and next date will be communicated to the petitioner by the said authority and shall obtain the signature of the petitioner. However, the said date should not be later than 15 days.

[iii] On receiving the necessary documents from the petitioner and after giving an opportunity of being heard to the petitioner, the authority shall forward its report to the Appellate Authority as expeditiously as possible but within a period of four weeks thereafter.

[iv] In view of the above directions and without considering into the larger question and legality and validity of the order passed by the authority, the impugned order passed by the appellate authority i.e. Additional Director General of Foreign Trade dtd.7/9/2005 is hereby quashed and set aside and the appellate authority

is directed to pass a fresh order in accordance with law and on merits, after considering the report that may be submitted by the Adjudicating Authority after due verification.

If under the law, the petitioner is entitled to have an opportunity of personal hearing by the appellate authority, the appellate authority shall give the same and shall pass appropriate order as aforesaid.

Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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